

From: Tad
To: Microsoft ATR
Date: 1/25/02 6:02pm
Subject: Microsoft Settlement

To Who it May Concern:

Pursuant to the Tunney Act, I am writing to advise that the proposed settlement of the United States vs. Microsoft antitrust case allows and even encourages anticompetitive practices to continue. The proposed settlement should not be adopted without substantial revision, and is not in the public interest. Of primary concern to me are the following issues which are not addressed in the proposed settlement (From Dan Kegel's analysis on the web at <http://www.kegel.com/remedy/remedy2.html>):

1. The PFJ places restrictions on how Microsoft licenses its products to OEMs, but not on how it licenses products to large users such as corporations, universities, or state and local governments, collectively referred to as 'enterprises'. Yet enterprise license agreements often resemble the per-processor licenses which were prohibited by the 1994 consent decree in the earlier US v. Microsoft antitrust case, in that a fee is charged for each desktop or portable computer which could run a Microsoft operating system, regardless of whether any Microsoft software is actually installed on the affected computer. These agreements are anticompetitive because they remove any financial incentive for individuals or departments to run non-Microsoft software.
2. Microsoft uses license terms which prohibit the use of Windows-compatible competing operating systems. MSNBC (a subsidiary of Microsoft) offers software called NewsAlert. Its EULA states: "MSNBC Interactive grants you the right to install and use copies of the SOFTWARE PRODUCT on your computers running validly licensed copies of the operating system for which the SOFTWARE PRODUCT was designed [e.g., Microsoft Windows(r) 95; Microsoft Windows NT(r), Microsoft Windows 3.x, Macintosh, etc.]. ..." Only the Windows version appears to be available for download. Users who run competing operating systems (such as Linux) which can run some Windows programs might wish to run the Windows version of NewsAlert, but the EULA prohibits this. MSNBC has a valid interest in prohibiting use of pirated copies of operating systems, but much narrower language could achieve the same protective effect with less anticompetitive impact. For instance, "MSNBC Interactive grants you the right to install and use copies of the SOFTWARE PRODUCT on your computers running validly licensed copies of Microsoft Windows or compatible operating system." would still allow use of non-microsoft (yet compatible) operating systems.

What is the use in allowing the development of Microsoft-compatible operating systems when Microsoft practices anti-competitive tactics to restrict the use of all other software? There are many other issues we should be concerned with. A more comprehensive list can be found in Dan

Kegel's analysis at <http://www.kegel.com/remedy/remedy2.html>.

Again, I would like to re-iterate that I am commenting on this proposed settlement as provided by the Tunney Act, and I do not feel that the proposed Microsoft settlement is in the best public interest, nor does it effectively prevent Microsoft from continuing anti-competitive practices.

Sincerely,

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